IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE EIGHTH DAYOF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 9741 of 2004

Between:

1 B.V.Sarma S/o. B Ramachandramurthy
S.B.H. Colony, Baghamberpet, Hyderabad 50013.
2 B.Narsihmulu S/o. B. Ramakrishna
r/o. H.No.46/2RT, Vijayanagar Colony
Hyderabad.

..... PETITIONERS

AND

1 Commissioner for Cooperation and Registrar of Coop. Societies Andhra Pradesh, Gruhakalpa Bldgs, Nampally, Hyderabad.
2 Deputy Registrar/Divisional Cooperative Officer Hyderabad (West Division), Ranga Reddy District at Abids, Hyderabad 50001.
3 HMT Officers Cooperative House Building Society Ltd.TBC No.483 Alwal, rep., by its its Secretary, Secunderabad.
4 Sub Divisional Cooperative Officer, Rajendranagar /PIC U/s 32 (7) (a) of APCS Act, O/o Deputy Registrar/Divisional Coop Officer, Ranga Reddy District at Abids, Hyderabad 50001.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly in the nature of writ of mandamus declaring the orders dt 5.6.2004 in RC No.16160/204-LI of the 1st respondent i.e., Commissioner for Cooperation and Registrar of Cooperative Societies, Andhra Pradesh in suspending the orders Dt.20-5-2004 in RC No.3056/2002 P wherein the Managing Committee of the HMT Officers Cooperative House Building Society Ltd., TBC 483 Hyderabad has been declared to have been ceased to hold office and the orders of even date and No. of the 2nd respondent in appointing the 4th respondent as official PIC U/s 32 (7) (a) of the Act as without jurisdiction, illegal, arbitrary mala fide besides contrary to the provisions of Section 32 (1-A) of the A.P. Cooperative Societies Act and pass such other order.

For the Petitioners:MR.D.V.BHADRAM, Advocate.

For the Respondents : GP FOR COOPERATION

The Court Made the Following :

ORDER:

This Writ Petition is filed by the petitioners aggrieved by the order dated 20-05-2004 of the first respondent under which the first respondent has suspended the order of the second respondent declaring that the members of the committee of the third respondent society ceased to hold the office in terms of Section 32 (1-A) of Andhra Pradesh Co-operative Societies Act, 1964 (for short "the Act") as they failed to convene the general meeting within six months for the period ending with 31-03-2004.

2. According to the petitioners, when this fact was brought to the notice of the second respondent, the second respondent issued notice and after hearing the members of the Managing Committee, passed the order declaring that the members of the committee ceased to hold the office. Simultaneously, the Sub-Divisional Cooperative Officer, Rajendranagar was appointed as person in-charge for a period of three months or till the elections are held to the new committee and the new committee assumes the charge, whichever is earlier. Against the said order, the out going President of the Managing Committee filed a revision before the first respondent and sought for an interim order of suspension. The Commissioner and Registrar of the Co-operative Societies passed the impugned order on 05-06-2004, under which the order of the Deputy Registrar was suspended for a period of two months from the date of the order, observing that, in the meanwhile, the Managing Committee may seek condonation of delay in conducting the general meeting from the Government under Section 123 of the Act. Aggrieved by the said order, the petitioners, who are members of the third respondent society, have come up with the present Writ Petition.

3. According to the learned Counsel for the Petitioner in terms of Section 32(1-A) of the Act, the Managing Committee, which fails to convene the general body meeting once in each half year, the members of the committee shall cease to hold office on the day, next after the first day on which the general meeting should have been held,

and, it shall be competent for the Registrar, not withstanding anything in the bylaws, to call such general meeting in such manner as may be prescribed. According to the learned Counsel, as the Managing Committee of the third respondent society failed to convene the general meeting in the half year ending 31-3-2004, a revision was preferred before the second respondent bringing to his notice about the failure of the Managing Committee in convening the general meeting, as well as the consequential cessation of the members of the Managing Committee. The third respondent after issuing notice to the members of the Managing Committee passed orders. When once such an order has been passed, it is not open to the first respondent-Commissioner to suspend such an order, as there are absolutely no grounds to interfere with such order.

4. The learned counsel also contended that the first respondent suspended the said order for a period of two months, observing that the Managing Committee meanwhile can approach the Government for obtaining exemption in terms of Section 123 of the Act. According to the learned Counsel, the provisions of Section 123 of the Act have no application to the members of the Managing Committee, as the said provisions contemplate exemption with reference to the society or class of societies from any of the provisions of the Act. The learned Counsel also contended that a similar issue fell for consideration before this Court, in the case of ***State of Andhra Pradesh vs. Multicoop's Association, Hyderabad***, and a Division Bench of this Court held that granting exemption from conducting elections, exercising the powers under Section 123 by the Government is illegal and without jurisdiction. The learned Counsel also relied upon the judgment of this Court in the case of ***P.Narayana Rao vs. State of Andhra Pradesh***, wherein the learned Single Judge of this Court considered almost an identical issue, where the Government exercising the powers under Section 123 passed orders after a period of four months condoning the lapse and allowed to continue the Managing Committee in office. This Court held that the Government has no such power, especially granting exemption, four months after the managing committee members ceased to hold the office. Therefore, the learned Counsel contended that the impugned order of the first respondent is illegal and unsustainable.

5. The learned Government Pleader supported the order basing on the counter filed by the second respondent. But, a perusal of the counter does not show how the order of the first respondent could be sustained. In fact, the counter was not filed by

the second respondent on behalf of the first respondent. On behalf of the third respondent, a separate counter is filed supporting the action of the first respondent. The learned Counsel also contended that the impugned order passed is only in the nature of the interim order. As such the petitioner can as well approach the first respondent seeking to set aside the order. Apart from that, there is only an observation by the first respondent that the Managing Committee of the third respondent society may approach the Government seeking exemption under Section 123 of the Act. Further, though a representation has been made before the Government, so far no orders have been passed. Therefore, it is pre-mature at this stage to contend, as the Government is yet to grant exemption under Section 123. Further, the learned Counsel contended that as the elected Managing Committee is not in the management and a person in-charge has already been appointed, appropriate directions may be issued for conducting elections to elect a new Managing Committee.

6. Heard both sides and considered the material on record.

7. Admittedly, the members of the Managing Committee of the third respondent society did not convene the general meeting as contemplated under Section 32(1) of the Act. Consequently, in terms of Section 32(1-A) of the Act, the members of the Managing Committee shall cease to hold the office. When this fact was brought to the notice of the second respondent-Deputy Registrar for Cooperative Societies, he took up the matter and after giving notice and opportunity to the members of the Managing Committee, he passed the order dated 20-05-2004, declaring that the members of the Managing Committee ceased to hold the office in terms of Section 32(1-A) of the Act for failure to conduct the general meeting on or before 31-03-204. When the said order was assailed in the revision before the first respondent, the first respondent without looking into the validity or otherwise suspended the said order for a period of two months with an observation that the Managing Committee can approach the Government under Section 123, seeking exemption from holding the general body meeting. The said order is assailed in the present writ petition.

8. A perusal of the provisions of Section 32(1) and 32(1-A) of the Act clearly shows that once the general meeting is not held once in six months, the members of the committee shall cease to hold the office. Here the first respondent granted the suspension of the said declaration of cessation of the members of the Managing Committee to hold the office of the third respondent society on the premise that they

can approach the Government seeking exemption under Section123 of the Act. A perusal of Section 123 of the Actshows that the Government is empowered to grant exemption from the application of any of the provisions of the Act in respect of any society or class of societies. There is no reference to the Managing Committee or to the members of the managing committee. This issue was also considered by this Court in the judgments referred to earlier, wherein, it was held that such power cannot be exercised after the cessation of the members of the managing committee to hold the office, though, this court did not consider whether such power of exemption can be exercised with reference to the members of the Managing Committee.

9. In the light of the above judgments of this Court, the impugned order passed by the first respondent is clearly illegal and unsustainable and the same is accordingly set aside.

10. By order of the second respondent dated 20-05-2004, the Sub-Divisional Co-operative Officer, Rajendranagar was appointed as person in-charge for a period of three months or till the elections are held to the Managing Committee. At the time of hearing, both sides also sought for appropriate directions to hold the elections to the Managing Committee. In the light of the above, the first respondent is directed to issue necessary orders or directions to conduct the elections to the Managing Committee of the third respondent society expeditiously, preferably within a period of two months from the date of the receipt of this copy of the order

11. The Writ Petition is accordingly allowed.

2004. S. Ananda Reddy, J.

Note: Issue urgent copy.

Kvh/Jsu

1 Commissioner for Cooperation and Registrar of Coop. Societies, Andhra Pradesh, Gruhakalpa Bldgs, Nampally, Hyderabad.
2 Deputy Registrar/Divisional Cooperative Officer Hyderabad (West division), Ranga Reddy District at Abids, Hyderabad 50001.
3 The Secretary,HMT Officers Cooperative House Building Society Ltd.TBC No.483 Alwal, Secunderabad.
4 Sub Divisional Cooperative Officer, Rajendranagar /PIC U/s 32 (7) (a) of APCS Act, O/o Deputy Registrar/Divisional Coop Officer, Ranga Reddy District at Abids, Hyderabad 50001.

5..2CCs to the Government Pleader for Cooperation, High Court Buildings, Hyderabad.

2.2CD copies.